

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
August 22, 2013

Meeting called to order at 6:05 p.m.

Board Members Present: Tom Emerson, Deborah Driscoll, Mark Alesse, Ann Grinnell, Rich Balano, Susan Tuveson, Bob Melanson (6:10 p.m.)

Members absent: None

Staff: Gerry Mylroie, Planner

Pledge of Allegiance

Minutes:

June 27, 2013

Ms. Grinnell moved to approve as corrected

Seconded

Unanimous by all members present

July 11, 2013

Mr. Balano moved to approve as submitted

Ms. Tuveson seconded

Unanimous by all members present

July 25, 2013

Ms. Driscoll moved to approve as submitted

Ms. seconded

Unanimous by all members present at the 7/25 meeting

August 8, 2013

Ms. Grinnell moved to approve as corrected

Mr. Alesse seconded

Unanimous by all members present at the 8/8 meeting

Public Comments:

Earldean Wells, Conservation Commission, requested the Board add to their punch list discussion regarding alteration of a site under Board review prior to approval. Mr. Emerson explained there is nothing in the code specifically addressing site changes, unrelated to a project under Board review. Ms. Tuveson noted work unrelated to the project under Board review should not be an issue. Mr. Balano suggested all site changes or development ceases once a project is under Board review.

Board discussion began with Item 9.

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – Town Code Amendment - Title 16 Land Use Development Code. Discuss proposed minor amendments and make a recommendation to Town Council. Amendments are proposed to the following:

- 1) *16.8.9.4.M Off -Street Parking Standards.* Replace “Board of Appeals” with “Town Planning Board”.
- 2) *16.8.10.9.L.4 Signs Allowed Without a Sign Permit – Real Estate Signs.* Replace “Code” with “title”.
- 3) *16.10.9.1.4.B Approved Plan Expiration;* Replace “or” with “and”.

The Public Hearing opened at 7:13 p.m.

- (1) Ms. Tuveson requested amending the language in 16.8.9.4.M and, following Board discussion,

Ms. Grinnell moved to amend Title 16.8.9.4.M, Off-Street Parking Standards, to read:

The Town Planning Board may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated said parking facility will substantially meet the intent of the requirements by reasons of variation in the anticipated periods of maximum use.

Ms. Tuveson seconded

Motion carried unanimously

(2) Title 16.8.10.9.4, Signs Allowed without a Sign Permit.

Mr. Mylroie received a suggestion to reduce the amount of time real estate signs may remain up.

Following Board discussion:

Ms. Grinnell moved the following changes to Title 16.8.10.9.4 – *Each sign is removed within fourteen (14) days of transfer of title.*

Mr. Balano seconded

Discussion followed regarding the size of real estate signs and whether the size is a total for both sides.

Ms. Grinnell moved to amend her motion to include the following change to Title 16.8.10.9.1 – *Each sign does not exceed twelve (12) square feet in total sign area.*

Mr. Balano seconded

Amendment to the motion carried unanimously

Amended motion carried unanimously

(3) Title 16.10.9.1.4 Approved Plan Expiration

Board members discussed what is considered substantially complete regarding a Board approved project vs. substantial work completion with a building permit. The Board will discuss this further. Ms. Wells asked about plan approval extensions and whether the applicant will be required to meet the existing ordinance at the time of the extension. Mr. Straub, CMA, suggested that if an approval has been granted but the project has not started, the Board must determine if sufficient changes in the ordinance warrant review under the current ordinance. If a project has begun and needs an extension, the extent of completion should be considered by the Board when granting an extension on a case-by-case basis. Including ‘may not’ in the ordinance language could provide the applicant with fair warning. Discussion followed regarding a reasonably allowable extension period.

Ms. Grinnell moved to amend language in Title 16.10.9.1.4 Approved Plan Expiration as follows:

A. A subdivision plan’s approval by the Planning Board will expire if work on the development has not commenced within one year, and is not substantially complete within three years from the date of Board approval. The Planning Board may or may not, by formal action, grant extensions for an inclusive period from original approval date not to exceed five years.

B. A non-subdivision plan’s approval by the Planning Board will expire if work on the development is not commenced within one year, and substantially complete within two years from the date of Planning Board approval. The Planning Board may or may not, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.

Ms. Driscoll seconded

Following further Board discussion:

Ms. Grinnell moved to amend her motion to include:

16.5.2.4 A permit expires if no substantial work has been commenced within six months from date of issue, and expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon application and payment of a renewal fee.

Ms. Driscoll seconded

Amended language carried unanimously

Amended motion carried unanimously

Break

[The Board agreed to proceed to Item 8]

ITEM 2 – Town Code Amendment – Title 16.10.8.2.1 Conditions — General. Discuss proposed amendment and make a recommendation to Town Council. The amendment includes the provision to include off-site improvements related to the project as a condition of planning board approval.

Mr. Mylroie explained this section has been expanded to include improvements the Board may require as a result of development that impacts off-site improvements and is not provided for in the existing code language and needs clarification. Ms. Tuveson noted her concerns regarding improvements to public property and can be highly subjective. Mr. Mylroie explained if the code requires sidewalks and trees, applicants should provide for these improvements, or contribute to a fund to make these improvements. Ms. Driscoll stated there needs to be consistency in application. Mr. Emerson felt this is too broad and money put into a ‘sidewalk fund’ could be applied to another part of town. Mr. Mylroie stated if the Board does not exercise their authority to require off-site improvements, the ability to mitigate development impact will be lost. Ms. Grinnell stated she was uncomfortable with the language as presented. Mr. Balano noted this revision states what the Board has already been doing. Following discussion:

Mr. Melanson moved to amend Title 16.10.8.2.1 to include the following language:

Off-site improvements to meet Town Code requirements may or may not be required to mitigate a development’s off-site impact.

Mr. Balano seconded

Discussion followed regarding applying Town Code requirements for off-site improvements.

Motion carried unanimously

ITEM 3 – Town Code Amendment – Title 16.10.9.2 Field Changes.

Discuss proposed amendment and make a recommendation to Town Council. Proposed amendment proposes to remove Section 16.10.9.2.A. Minor and all references to ‘major’ in 16.10.9.2.

[Not Discussed]

ITEM 4 – Town Code Amendment – Title 12.1 Excavations. Discuss proposed amendment and make a recommendation to Town Council. Amend Section 12.1.2 Issuance and Record of Permits to include review by the Town Planner and Code Enforcement Officer prior to the Commissioner of Public Works issuing permits for driveway cuts.

[Not Discussed]

OLD BUSINESS

ITEM 5 – Town Code Amendment – Title 16, Chapter 11, Marine Development.

Discuss proposed amendment and make a recommendation to Town Council. Amendments include changes to procedures allowing for Port Authority application submittal prior to obtaining State and Federal permit approvals.

[Not Discussed]

ITEM 6 – Board Member Items / Discussion

A. Sowerby Re-Consideration;

Mr. Balano moved to re-consider action language in the Findings of Fact for the Sowerby Mixed-Use Development as read on July 11, 2013, to read:

The Planning Board adopts the Findings of Fact for the Sowerby Mixed-Use Development, Modification to an Approved Plan as read, finding the application does not conform to local ordinances and denies the application waiver requests. The approved plan modification is denied.

Ms. Tuveson seconded

Motion carried with 5 in favor; 0 against; 2 abstentions (Grinnell and Driscoll)

- B. Review punch list, update and establish priorities; [not discussed]
- C. Review By-Law changes; [not discussed]
- D. Discuss workshop on municipal planning boards; [not discussed]
- E. Other

ITEM 7 – Town Planner Items: A. Woodside Meadows Estate Street Naming application; B. Residential Growth Management; C. Quality Improvement Overlay Zone; and D. Other

A-C: [Not Discussed]

D. Sarah Long Bridge

Mr. Mylroie explained the concerns of residents who felt they had not been included in the plan designs and suggested the Board call a public hearing to include interested residents. A notice will be printed and mailed to affected residents. He then explained the circulation issues and timing for improvements.

Mr. Melanson moved to schedule a public meeting with the MDOT regarding the Sarah Long Bridge project on September 19, 2013 at 6:00 p.m.

Mr. Balano seconded

Motion carried unanimously

D. LID Area:

Mr. Mylroie presented an update to the LID area including the transplanted crabapple trees from the Memorial Circle and addition of new trees along the view line to Town Hall. Ms. Wells noted two of the trees are in the middle of the identified wetland area and this area should be left alone. Mr. Emerson asked if the DEP has reviewed changes to the previously approved plan. Mr. Mylroie referenced the approved DEP plan. Discussion followed regarding evergreen buffering along the parking lot area behind the existing building.

Board members agreed that the landscape plan be amended per discussion and returned for approval as an amendment to an approved plan. Ms. Grinnell requested the amended plan show evergreens be included along the entire site. Mr. Emerson stated the trees need to be removed from the wetland, however, the crab apples removed from the circle can be planted prior to plan amendment review.

Ms. Wells noted she has had reports of people walking across the traffic circle to the memorial circle. Mr. Emerson stated he saw individuals in the circle as well.

NEW BUSINESS

ITEM 8– Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

A discussion on the applicability the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage.

Bill Straub, CMA, explained he has worked with the town for a number of years and never saw the document until recently. Originally published in 1967, the 1975 *Soil Suitability Guide for Land Use Planning in the State of Maine* was, at the time, useful. However, it was never intended to be a regulatory document, but as a guide to homeowners, farmers and contractors. Planning departments and land use regulations are not what they were forty years ago. The guide illustrated the types of soils for various uses and their favorability, rating from very poor to good. Soil science and engineering has advanced

over the years to make this publication invalid for determining current land use and septic use. He noted that something rated poor or very poor does not necessarily mean ‘poorly drained’, but may mean excessively drained or hard to dig or shallow depth to bedrock, and are not necessarily characteristics that do not meet the Maine State Plumbing Code. Excluding land for development or septic systems should utilize current standards as required by the Maine State Plumbing Code. A state soil scientist has also recommended the publication not be used – it is not the standard to use for regulating land use. Another document *Soil Potential Ratings for Low Density Development in York County* is more up to date, and looks at soil potential ratings for various uses, noting that soils can be engineered for a proposed use. However, this publication is not designed to be used as the ordinance suggests, and should not be swapped for the *Soil Suitability Guide*. The Board should instead focus on land not suitable for development as it relates to septic use and that also reflect Maine State Plumbing Code requirements, i.e. what soil characteristics don’t work for septic systems. Right now you’re stuck with a bad standard that doesn’t work and doesn’t well serve the public, the Board or developers.

Ms. Grinnell suggested this be included for Board review and discussion. Ms. Wells asked if a property is rated with very good drainage, but has so many septic systems in a small area, would they would affect how the soil drains. Mr. Straub stated it is possible, however that in this type of situation there are systems available to treat the drainage and filtering of effluents and nitrates. Ms. Driscoll asked if poor or poorly drained soils can be considered wetlands by a soil scientist. Mr. Straub said no, not necessarily. Ms. Tuveson asked what could be included in the ordinance that would be useable by a variety of interests. Mr. Straub noted there are obvious soils (wetland and poorly drained) and characteristics (bedrock) that would exclude the placement of a septic system. He recommended looking into what other communities have in place to deal with these issues.

Jeff Clifford, Altus Engineering, noted that reference to the *Soil Suitability Guide* is also noted in Title 16.8.7.1.C, and would need to be addressed as well.

Mr. Alesse suggested the Board also needs to address the Board’s authority to waive provisions of the ordinance and how this will be handled in the interim.

ITEM 9– Town Quality Improvement Plan for Wastewater Management (Sewer Plan) – Phase II and III Plan Review. Action: Plan Review and Recommendation to Town Council. The Kittery Sewer Services Department requests approval for the general concept plan for Phase II and III as the basis for subsequent specific preliminary and final plan review and approval. Previously the Town Planning Board approved the general concept plan for the Infrastructure Improvement and Phase I (Extension from the treatment facility, I-95 undercrossing, Business Park/236 to Stevenson Road) portions of the WM Plan. Phase II includes extensions north of Route 236 in the Shapleigh Neighborhood and Phase III includes extensions south of 236 on Martin Road. Town Representative is Superintendent of Wastewater Services, George Kathios.

Mr. Mylroie summarized the process by which the phases of the sewer improvement plan was approved by the Planning Board and the Council. He explained the plan before the Council is an authorization including infrastructure maintenance of the project, and design for Phase I, consistent with Board approval. The request is to include the three phases as one project, now represented as Phase II and III, and any conditions the Board may have.

Mr. Kathois noted the infrastructure bond for Phases 1-3 and the maintenance bond were approved by Council and the voters. Mr. Mylroie stated a bond anticipation note is now before the Council for engineering design. Mr. Emerson stated the Board did not proceed with recommendations for Phase 2 and 3 because, from a planning perspective, it was not clear that the proposed phases addressed long-term planning needs regarding development density.

Mr. Kathios explained the goal is to bring sewer services to many older homes with old and failing septic systems that could adversely impact Spruce Creek. The trailer park on Dana Avenue has received numerous violations from the DEP regarding septic issues; interest has been voiced regarding sewer availability at the Business Park; Eliot’s interest is no longer part of the plan with the proposed sewer line ending at Martin Road. The proposed schedule and implementation plan financially benefits the Town.

Ms. Driscoll asked about the licensed overboard discharge abutting Rt. 236 and whether this could be included in Phase I. Mr. Kathios said they are considering a temporary hook up for this.

Mark Thompson, Klinefelder, explained that if the Board is agreeable to the proposal in front of them at this time there would be no more phases and it would continue as single contract. This is the best way to move forward as there is an economy of scale because of the increase in materials and professional services associated with the project.

Mr. Mylroie explained the Sewer Department would return to the Board with more detail for each remaining portion of the project. Staff would like more information regarding other infrastructure issues regarding Phase I plans. He summarized other issues impacting growth and future development including availability and size of sewer connections. Mr. Emerson noted capacity needs to be addressed for properties not abutting roadways. Ms. Driscoll asked they refer to the area as the 'Shapleigh School Neighborhood' not the Shapleigh Neighborhood. She also asked about those individuals who have new leach fields who will be required to tie into the new system. Mr. Kathois stated Council will have to address how to deal with this, but there is a possibility that financing could be included on sewer bills. Ms. Grinnell asked why Dana Avenue is not part of Phase I. Mr. Kathois explained there is a possibility they could be tied in right away. Discussion followed regarding infrastructure design such as roads and utilities. Mr. Thompson explained the Sewer Department can accommodate developers prior to and during the design and construction of the proposed sewer lines, including all required easements. Mr. Kathois explained if the Board approves the conceptual design, the final design and logistical issues will be handled by the selected design engineers and the Sewer Department. Mr. Mylroie stated based on the Board's decision now, the funds will then be released by Council so the planning stage can proceed.

Ms. Tuveson moved to recommend to Council approval of the Quality Improvement Plan for Wastewater Management with the plan showing the coordination of possible street and related infrastructure improvements and access onto Route 236, and address the capability of accommodating additional growth in the Shapleigh School neighborhood area including northeast to Wilson Road, south of Spruce Creek, and to reference as one project with no phases.

Mr. Melanson seconded

Ms. Driscoll asked if there will be additional capacity for Ridgewood Drive. Mr. Emerson asked if there will be an opportunity for the Board to further discuss capacity issues, and understands no funding will be released to secure easements, road design, etc. Mr. Kathois agreed, noting coordination with DPW and the Water District will also be followed. Ms. Driscoll suggested the Report to Council include the specific issues of concern to the Board.

Ms. Driscoll amended her motion to include 'recommend issuance of the Bond Anticipation Note'.

Mr. Melanson seconded

Amendment language approved unanimously

Original motion carried unanimously

[Board returned to Item 1.]

Mr. Alesse moved to adjourn

Ms. Grinnell seconded

Motion carried unanimously by all members present

The Kittery Planning Board meeting of August 22, 2013 adjourned at 9:11 p.m.
Submitted by Jan Fisk, Recorder, August 26, 2013